

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CLERK

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JANE MORALES, ERIC MORALES and  
M.M., a minor, by her parents and Natural  
Guardians, JANE MORALES and ERIC  
MORALES,

10:56 am, Sep 09, 2019

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

Plaintiffs,

-against-

VALLEY STREAM UNION FREE SCHOOL  
DISTRICT 24, VALLEY STREAM UNION  
FREE SCHOOL DISTRICT 24 BOARD OF  
EDUCATION, VALLEY STREAM CENTRAL  
HIGH SCHOOL DISTRICT and VALLEY  
STREAM CENTRAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

ORDER  
18-CV-3897 (SJF)(AYS)

Defendants.

X

FEUERSTEIN, District Judge:

Pending before the Court is the Report and Recommendation of the Honorable Anne Y. Shields, United States Magistrate Judge, dated August 14, 2019 (“the Report”), (1) recommending that the motion of defendants Valley Stream Union Free School District 24, Valley Stream Union Free School District 24 Board of Education, Valley Stream Central High School District and Valley Stream Central High School District Board of Education (collectively, “defendants”) seeking to dismiss the claims of plaintiffs Jane Morales, Eric Morales and M.M., a minor, by her parents and natural guardians Jane Morales and Eric Morales, against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be granted; and (2) advising, *inter alia*, (a) that “[a]ny written objections to th[e] Report . . . must be filed . . . within fourteen (14) days of filing of th[e] [R]eport,” (Report at 12) (citing 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 6(a) and Rule 72(b)), and (b) that “[f]ailure to file objections within

fourteen (14) days will preclude further review of th[e] [R]eport . . . either by the District Court or Court of Appeals.” (*Id.*) (citing *Thomas v. Arn*, 474 U.S. 140, 145, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); *Cidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008)). A copy of the Report was served upon counsel for all parties via ECF on August 14, 2019. (See Docket Entry [“DE”] 19). No party has filed any timely objections to the Report, nor sought an extension of time to do so. For the reasons set forth below, the Report is accepted in its entirety.

## I. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge on a dispositive matter within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See *Thomas*, 474 U.S. at 150, 106 S. Ct. 466. Where a party “received clear notice of the consequences of the failure to object” to a report and recommendation on a dispositive matter, *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (quotations and citation omitted); accord *Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989), his “failure to object timely to [that] report waives any further judicial review of the report.” *Frank*, 968 F.2d at 16; see also *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015); *Cidor*, 517 F.3d at 604.

Nonetheless, the waiver rule is non-jurisdictional and, thus, the Court may excuse a violation thereof “in the interests of justice.” *Neita v. Precision Pipeline Sols.*, 768 F. App’x 12,

14 (2d Cir. Apr. 29, 2019) (summary order) (citing *United States v. Male Juvenile* (95-CR-1074), 121 F.3d 34, 39 (2d Cir. 1997)); *see also DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000).

“Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord Neita*, 768 F. App’x at 14.

## II. Review of Report

Since no party has filed any timely objections to Magistrate Judge Shields’s Report, nor sought an extension of time to do so, they have “waive[d] any further judicial review of the findings contained in the [R]eport.” *Spence*, 219 F.3d at 174. As the Report is not plainly erroneous, the Court will not exercise its discretion to excuse the parties’ default in filing timely objections to the Report in the interests of justice. Accordingly, the Report is accepted in its entirety and, for the reasons set forth therein, defendants’ motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is granted to the extent that: (i) the claims of Eric Morales and M.M. against defendants are dismissed in their entirety with prejudice for failure to state a claim for relief; (ii) all claims against the Valley Stream Central High School District and the Valley Stream Central High School District Board of Education are dismissed in their entirety with prejudice for failure to state a claim for relief; (iii) the claims of Jane Morales that accrued more than three (3) years prior to the date this action was commenced are dismissed in their entirety with prejudice as time-barred; and (iv) the remaining claims of Jane Morales are dismissed in their entirety without prejudice for failure to state a claim for relief, ***provided*** that Ms. Morales

file an amended complaint re-pleading those claims **by no later than October 9, 2019**, or her claims will be deemed dismissed in their entirety with prejudice.

### III. Conclusion

For the reasons set forth above, the Report is accepted in its entirety and, for the reasons set forth therein, defendants' motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is granted to the extent that: (i) the claims of Eric Morales and M.M. against defendants are dismissed in their entirety with prejudice for failure to state a claim for relief; (ii) all claims against the Valley Stream Central High School District and the Valley Stream Central High School District Board of Education are dismissed in their entirety with prejudice for failure to state a claim for relief; (iii) the claims of Jane Morales that accrued more than three (3) years prior to the date this action was commenced are dismissed in their entirety with prejudice as time-barred; and (iv) the remaining claims of Jane Morales are dismissed in their entirety without prejudice for failure to state a claim for relief, *provided* that Ms. Morales file an amended complaint re-pleading those claims **by no later than October 9, 2019**, or her claims will be deemed dismissed in their entirety with prejudice.

SO ORDERED.

/s/ *Sandra J. Feuerstein*  
SANDRA J. FEUERSTEIN  
United States District Judge

Dated: September 9, 2019  
Central Islip, New York